IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 221 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME TAX

Versus

HINDUSTAN CONSTRUCTION CO.

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Appearance:
1. INCOME TAX REFERENCE No. 221 of 1992
MR MR BHATT for Petitioner

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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 17/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the revenue, the following question of law is referred for the opinion of this Court:-

"Whether, the Appellate Tribunal is right in law and on facts in holding that the assessee was entitled to depreciation @30% on dumpers?"

2. The assessment year involved in assessment year 1984-85. While drawing the statement of case, the Tribunal has referred to and relied on the earlier orders in the assessee's own case for assessment years 1982-83 and 1983-84 being R.A. Nos. 977 and 978/Ahd/1990 arising out of ITA Nos.1049 and 1050/Ahd/87 decided on 11-5-1990. The said reference applications have given rise to ITR No.35 of 1989 which was decided by this Court on 5-7-2002 wherein the similar question referred to this Court was answered in the affirmative i.e. in favour of the assessee and against the revenue.

3. Following the aforesaid decision, we answer the present question which is referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

4. The Reference is accordingly disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

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